

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.)	Criminal Action No. 17-66-RGA
)	
LUIS JOSE HERNANDEZ-GUILLEN,)	
)	
Defendant.)	

GOVERNMENT'S MOTION FOR DOWNWARD DEPARTURE
PURSUANT TO U.S.S.G. § 5K3.1

The United States of America, by and through its attorneys, David C. Weiss, Acting United States Attorney for the District of Delaware, and Daniel Logan, Assistant United States Attorney, moves this Court for a four-level downward departure from the otherwise applicable advisory United States Sentencing Guidelines, pursuant to United States Sentencing Guideline Section 5K3.1, based upon the defendant's eligibility for the District of Delaware's Illegal Reentry Fast-Track Program.

I. Procedural Background

On September 6, 2017, the defendant, Luis Jose Hernandez-Guillen, was charged by Criminal Complaint with one count of Illegal Reentry of a previously removed alien, in violation of 8 U.S.C. § 1326(a). The defendant pleaded guilty on November 14, 2017. Through that plea, the defendant accepted responsibility, agreed to the underlying factual basis supporting the charge, and waived his right to appeal, any collateral challenges under 28 U.S.C. § 2225, and a full pre-sentence investigation. The defendant moved for immediate sentencing without opposition from the Government on November 14, 2017.

II. Eligibility for the District of Delaware's Illegal Reentry Fast-Track Program

The defendant agreed to plead within 30 days of his custody for the instant offense. The defendant also agreed not to file any motions described in Fed. R. Crim. P. 12(b)(3) and waived a full pre-sentence investigation in Paragraph 7 of the Memorandum of Plea Agreement. He likewise waived the right to appeal and waived any collateral challenges to his conviction under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel, in Paragraph 10 of the Memorandum of Plea Agreement.

Accordingly, the United States believes the defendant qualifies for a four-level downward departure.

III. No Disqualifiers are Present in the Instant Case

Upon review of the defendant's Alien File, criminal and immigration history, the United States finds no disqualifying events or circumstances prohibiting the defendant's participation in the District of Delaware's Illegal Reentry Fast-Track Program.

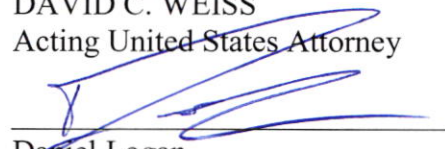
IV. Conclusion

Based on the foregoing, the United States requests that the Court grant its United States Sentencing Guideline § 5K3.1 motion and grant the defendant a four-level downward departure from

the otherwise applicable total offense level of 8 (applicable advisory Guidelines range of 0-6 months),
to a level of 4 (applicable advisory Guidelines range of 0-6 months). A proposed order is attached.

Respectfully submitted,

DAVID C. WEISS
Acting United States Attorney



Daniel Logan
Assistant United State Attorney

Dated: *November 8, 2017*

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ORDER

AND NOW, this _____ day of _____, 2017, upon consideration of the government's motion for a downward departure, pursuant to Section 5K3.1 of the United States Sentencing Guidelines, the Court hereby **ORDERS** that:

- (1) the defendant is eligible for the District of Delaware's Illegal Reentry Fast-Track Program; and
- (2) the government's motion for a four-level downward departure from the otherwise applicable guideline range under United States Sentencing Guideline 5K3.1 is hereby **GRANTED**.

HONORABLE RICHARD G. ANDREWS
U.S. District Court Judge